

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-090211

01/30/2012

HONORABLE JAMES P. BEENE

CLERK OF THE COURT

C. Gauna

Deputy

IN RE THE MATTER OF
AARRON BRASKETT

AARRON BRASKETT
4848 E ROOSEVELT #1036
PHOENIX AZ 85008

AND

MELANIE RENE VAN KORT

MELANIE RENE VAN KORT
P O BOX 40244
MESA AZ 85274

STEPHANIE A STROMFORS
DOCKET-FAMILY COURT-SE
OFFICE OF PUBLIC DEFENSE
SERVICES-CCC

**UNDER ADVISEMENT RULING
APPOINTMENT OF BEST INTEREST ATTORNEY**

On January 17, 2012, Respondent/Mother filed a motion for post-decree temporary order without notice for modification of child custody and parenting time. After considering Mother's *ex parte* motion, the Court granted a temporary order terminating Petitioner/Father's parenting time with the minor child. On January 25, 2012, the Court held an emergency hearing on Mother's motion. Mother, Father and Todd Robinson testified at the hearing. Based on the testimony presented at the hearing, the Court issues the following order:

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**MOTHER'S MOTION FOR TEMPORARY ORDER
WITHOUT NOTICE**

In her motion for post-decree temporary order without notice for modification of child custody and parenting time, Mother alleged that Father and the minor child's half-brother are sexually abusing the minor child while the minor child is in Father's care. (Mother's motion, at 2.) Mother sets forth a number of incidents in her motion where Father and the minor child's half-brother allegedly sexually assaulted the minor child. (*Id.* at 2-4.) These alleged sexual assaults occurred when Father and the minor child's half-brother penetrated the minor child's anus and/or vagina. (*Id.*)

Evidence Presented At The Emergency Hearing

At the emergency hearing, the Court admitted and considered a police report that recounted a forensic interview that was conducted with the minor child at the Child Help Center. When the interviewer asked about being poked, the minor child stated "my Mom pokuh my my butt, my Gabe pokuh my butt and Daddy my pokuh my butt." (Exhibit 1, Phoenix Police Department Report.) When the interview asked the minor child to tell her more about this incident, the minor child replied "my Mom, my Mom do that, my Mom." (*Id.*) Throughout the forensic interview, the minor child stated that Mom, Dad and Gabe [the minor child's half-brother] "poked her butt." (*Id.*)

The Court also admitted and considered an emergency room report regarding an examination that was conducted on the minor child on January 11, 2012. (*See* Exhibit 6.) Mother reported to the doctor that the minor child reported to her that Father and the minor child's half-brother had been "poking her in the butt." (*Id.* at 2.) After conducting a physical examination, the doctor reported that the minor child's rectal area had "normal tone. No mass, no tenderness no gross blood, sphinter (sic) is intact and smear from the rectum is guaic negative." (*Id.* at 4.) Additionally, the doctor reported that the minor child presented "normal female genitalia, no swelling, redness or bruising or bleeding, hymen is intact." (*Id.*) This physical examination is consistent with a physical examination that was conducted on the minor child on October 25, 2011. In the October 2011 examination, the doctor stated that the minor child's anogenital exam was "normal." (Exhibit 1.)

The Court also admitted and considered a "Speech Language Pathology Treatment Note" submitted at the hearing regarding the minor child. (*See* Exhibit 5.) In this report, Dr. Judith Barnes-Clark stated that, "[s]ince the time of her initial evaluation, [the minor child] has made steady improvements in the areas of expressive language, receptive language and pragmatics; however, [the minor child] remains significantly below age appropriate levels. . . [The minor child] is not able to reliably and clearly state her name or any other personal information

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(mother's name, address, etc..). Articulation skills limit the amount of language clearly expressed." (*Id.* at 1.)

Court's Findings

Pursuant to Rule 48 of the Arizona Rules of Family Law Procedure, a temporary order may be granted only if "it clearly appears from specific facts shown by affidavit or by the verified motion that irreparable injury will result to the moving party or a minor child of the party. . ." Similarly, A.R.S. § 25-315(D) provides that "[t]he court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued . . ."

Although the Court is concerned about the serious allegations made by Mother in her motion for post-decree temporary order without notice for modification of child custody and parenting time, the Court can only grant Mother's motion if it finds that evidence of irreparable injury will result to the minor child if no order is issued. Given the fact that the minor child is three and a half (3.5) years old, has limited articulation/communication skills and no evidence of abuse has been presented after two (2) medical examinations, the Court cannot find that Mother has met her burden of proof pursuant to the aforementioned Rule of Family Law Procedure and Arizona statute. Therefore,

IT IS ORDERED dismissing Mother's motion for post-decree temporary order without notice for modification of child custody and parenting time.

IT IS FURTHER ORDERED vacating the Court's January 17, 2012 temporary order terminating Father's parenting time with the minor child.

IT IS FURTHER ORDERED affirming the Court's February 20, 2011 order regarding Father's parenting time with the minor child.

**MOTHER'S REQUEST FOR APPOINTMENT OF A
BEST INTERESTS ATTORNEY**

At the emergency hearing, Mother requested that the Court appoint a guardian *ad litem* on behalf of the minor child. Although the Court does not find that Mother established an emergency situation pursuant to Rule 48, A.R.F.L.P., and A.R.S. § 25-315(D), the Court does find that there is an allegation of abuse or neglect of a child as set forth in Rule 10(A)(2)(a) of the Arizona Rules of Family Law Procedure. The Court further finds that neither party has the financial resources to pay for the services of the Best Interest Attorney. Therefore,

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IT IS ORDERED granting Mother's request for the appointment of a Best Interests Attorney.

IT IS FURTHER ORDERED appointing Stephanie Stromfors as the Best Interests Attorney in this matter. The terms for her appointment shall be detailed in a separate minute entry issued herewith.

REVIEW HEARING

IT IS ORDERED setting a Review Hearing to discuss any findings and/or recommendations made by the best interests attorney on **May 31, 2012 at 11:00 a.m. (time allotted: 1 hour)** before the Honorable James P. Beene, Courtroom 405, Southeast Facility, 222 East Javelina Drive, Mesa, Arizona.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

DATED the 30th day of January, 2012

/S/ HONORABLE JAMES P. BEENE

JAMES P. BEENE
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.